

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 1251 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair
copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation of
the constitution of India, 1950 or any order
made thereunder ?

5 Whether it is to be circulated to the civil
judge ?

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BHIMABHAI VITHALBHAI PATEL - Petitioner(s)

Versus

SPECIAL RECOVERY OFFICER & 6 - Respondent(s)

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Appearance :

MR AMIT V THAKKAR for Petitioner(s) : 1,
MS ARCHANA RAWAL, AGP for Respondent(s) : 1,
MR UTKARSH B JANI for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 3 - 4.
NOTICE UNSERVED for Respondent(s) : 5,
MR DHIRENDRA MEHTA for Respondent(s) : 6,
None for Respondent(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 11/04/2007

ORAL JUDGMENT

1. This petition was originally filed on 28th January, 2005 with the following prayers:

14. In the aforesaid premises, the petitioner approaches Your Lordships under Articles 226 and 227 of the Constitution of India and prays that :

(A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the notice dated 17.01.2005 issued by the respondent No.1-Bank;

(B) Pending admission, hearing and final disposal of this writ petition, Your Lordships may be pleased to stay the operation, implementation and execution of the notice dated 17.01.2005 issued by the respondent No.1-Bank and further be pleased to restrain the respondent No.1, their agent or assignees from in any way disturbing the possession of the petitioner of the land in question;

(C) Be pleased to pass such other and further reliefs as may be deemed just and proper by Your Lordships in the facts and circumstances of the case.

2. Subsequently, vide order dated 27.06.2006, the petitioner was permitted to amend the petition and prayer clause AA came to be inserted, which reads as under:

(AA) Your Lordships may be pleased to declare that the auction purchaser has no right as per the auction order dated 23.05.1988 since he has not complied with the conditions of the said order and the statutory provisions of the Bombay Land Revenue Code and he may be restrained by an appropriate writ, order or direction not to enforce the said order dated 23.05.1988 against the petitioner.

3. Thereafter, once again vide order dated 04.10.2006 one more amendment came to be granted whereunder prayer clause 14(BB) and 14(BBB) came to be incorporated as under:

14BB. Your Lordships may be pleased to issue a writ of certiorari any other writ, order or direction quashing

and setting aside the sale certificate dated 3.12.2005 and be pleased to declare that the same is bad, illegal and void ab-initio and not binding to the petitioner and be further pleased to declare that the possession receipt dated 13.05.2005 is also bad, illegal and be pleased to restrain the respondents from taking the actual physical possession of the land in question in pursuance to the said possession receipt or otherwise.

14-BBB Your Lordships may be pleased to issue a writ of certiorari and or any other appropriate writ direction and order quashing and setting aside the order dated 12.09.2006, passed by the Addl. Chief Secretary (Appeals) Revenue Department, in Revision Application No.1/2005.

4. The admitted facts are that the petitioner availed of loan for a sum of Rs.8,000/- from Gujarat State Co-operative Agricultural and Rural Development Bank Ltd. (the Bank). The petitioner could not discharge the liability and hence, the Bank initiated action in accordance with law for recovery of the outstanding dues. At the time of availing of the loan, agricultural land bearing block No.153 Survey No.164,

admeasuring 4 Acres and 39 Gunthas was mortgaged by the petitioner with the respondent No.1-Bank. Accordingly, for the purpose of the recovery of the outstanding dues, respondent No.1-Bank put the said property to auction sale through the Recovery Officer in accordance with provisions of the Bombay Land Revenue Code, 1879 (the BLR Code). On 23.05.1988, the property was sold at the public auction in favour of respondent No.6 herein for a sum of Rs.47,760/-. The successful bidder has made the payment for the land on 3rd February, 1988 and 17th February, 1988 after being given credit for the earnest money which was deposited along with the offer.

4.1 Pursuant to such sale on 17.01.2005, the Recovery Officer called upon the petitioner as well as respondent Nos. 2,3,4 and 5 to handover vacant and peaceful possession on 28.01.2005. It is at this stage that the petition has been preferred.

5. The learned Senior Advocate Mr.Sanjanwala appearing on behalf of the petitioner submitted that the order/ notice dated 17.01.2005 is patently bad and illegal as the Recovery Officer has no jurisdiction to issue such an order to

hand over possession. That the sale order was a conditional order and as approval of the Collector had not been obtained, the sale order could not become operative.

5.1 That the auction had been held in the year 1988 and as the auction purchaser had not requested for handing over the possession, the proceedings were barred by limitation and the Recovery Officer had made the order on 17.01.2005 in collusion with respondent No.6. In support of the submission regarding limitation, the Apex Court decision in case of *Pattam Khader Khan Versus Pattam Sardar Khan and another* (1996) 5 SCC 48 was pressed into service.

5.2 That without confirmation of the sale, the sale certificate had been issued some time in December, 2005 even when the status-quo order made by the Division Bench was operative.

5.3 That the auction order directed payment of Rs.20,810.41 to the petitioner and obtain receipt thereof, but the said condition had not been fulfilled and therefore also the auction order was not operative.

5.4 In relation to the proceedings before the Revenue Authority it was submitted that the order dated 12.09.2006 made by the Revisional Authority under Section 211 of the BLR Code was also patently bad and illegal because though the Authority has fixed the hearing only qua condonation of delay, the Authority had decided the matter on merits. In support of this submission, the learned advocate read extensively from order dated 12.09.2006.

6. None has appeared for respondent Nos. 2 to 5.

7. The learned advocate for respondent No.6 read extensively from the affidavit-in-reply filed by respondent No.6 to point out that not only had the auction-purchaser made payment of the entire purchase price but had been put in possession after great difficulty considering the adamant attitude adopted by the petitioner and respondent No.2, more particularly. He also invited attention to fact of filing successive suits before the Civil Court to repeal the contention of not pursuing the remedy of obtaining the possession in time stating that the Recovery Officer did not hand over possession only due to pendency of proceedings before the Civil Court. It was further submitted that the Civil Court while rejecting the

successive suits had categorically found that there was collusion between the petitioner and other respondents and the proceedings were filed before the Civil Court only by way of dilatory tactics so as to deprive respondent No.6, the successful bidder, from getting possession of auctioned property. He, therefore, urged that the petition did not deserve to be admitted.

7.1 In so far as revenue proceedings are concerned, it was submitted that the Revisional Authority had rightly rejected the application for condonation of delay taking into consideration the knowledge that the petitioner had about the auction proceedings and no interference was called for. That in fact the said proceedings were independent proceedings and could not have been permitted to be agitated by way of amendment of the petition as the entire character of the petition underwent change because of such amendment.

8. Before dealing with the respective contentions, it is necessary to take note of earlier round of proceedings so as to complete the record. On 1st April, 2005, the petition came to be rejected by this Court on the ground that the petitioner had suppressed material facts before approaching the Court by

way of petition. This observation was made in light of the fact that respondent No.2 herein had already preferred one another petition being Special Civil Application No.7040 of 2004 before this Court challenging notice dated 21.05.2004 in relation to the same proceedings, namely, handing over the possession of the auctioned property.

8.1 The petitioner challenged the said order before Division Bench of this Court in Letters Patent Appeal No.707 of 2005 which came to be filed on 29th April, 2005 but was circulated for the first time only on 30th May, 2005. The Hon'ble Division Bench has restored the petition to the file on the ground that the petitioner herein has an independent right to challenge the proceedings and further the earlier petition was dismissed as withdrawn with liberty to the said petitioner to agitate his grievance because the suit with respect to the subject matter of the Special Civil Application was pending in Civil Court.

9. The petition does not merit acceptance for the reasons that follow hereinafter.

10. The first contention that the auction sale was not complete because there was no confirmation of sale by the Collector deserves to be stated to be rejected. The reliance on behalf of the petitioner on Section 179 of the BLR Code is misplaced, to say the least. Though the attention of the learned advocate was invited to Section 178 of the BLR Code, according to him, it was not necessary for him to make any application because in the order dated 23.05.1988, it was stated by the Recovery Officer that the sale was subject to confirmation by the Collector, Surat.

11. Under Section 178 of the BLR Code, it is provided that at any time within 30 days from the date of sale of immovable property an application can be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake, or fraud, in publishing or conducting the sale; but, except as otherwise provided in Section 179 of the BLR Code, no sale shall be set aside on the ground of any such irregularity or mistake, unless the applicant proves to the satisfaction of the Collector that the applicant had sustained substantial injury by reason of such irregularity or mistake.

12. Section 179 of the BLR Code states that on expiration of 30 days from the date of the sale, if any such application as envisaged by Section 178 of the BLR Code is made, or if such application is made and rejected, the Collector shall make an order confirming the same. For the present, it is not necessary to take into consideration the proviso under Section 179 of the BLR Code.

13. The scheme, therefore, that is envisaged by the legislature is that for a period of 30 days from the date of the sale, the auction sale is kept in abeyance, and a party who is aggrieved by such auction sale is entitled to move the Collector by way of an application pointing out the existence of some material irregularity, or mistake, or fraud, in publishing or conducting the sale, coupled with fact that the applicant establishes that the applicant has sustained substantial injury by reason of such irregularity or mistake. Therefore, in absence of any application as envisaged by Section 178 of the BLR Code, the Collector is bound to confirm the same on expiration of 30 days, except in exercise of Suo-Motu powers under Section 179 of the BLR Code. Admittedly, as accepted by the learned Senior Advocate for the petitioner, the petitioner had not made any application

under Section 178 of the BLR Code. Therefore, the legislative scheme would operate with all its rigours and on expiration of 30 days the sale is bound to have been confirmed by the Collector. In absence of any evidence to the contrary one has to proceed on the presumption that the Authority has acted in accordance with law as envisaged by the provisions and one cannot presume violation of a statutory provision. It is the petitioner who has contended as regards the absence of confirmation of sale and it is for the petitioner to establish the same. The petitioner cannot ask the Court to presume violation of the law by the Authority.

14. The next contention is in relation to the non-payment of a sum of Rs.20,810.41 which is stated to be payable to the petitioner as recorded in auction sale order dated 23.05.1988. Assuming that the petitioner has not received said amount it would be open to the petitioner to move the respondent-Bank in this regard, but that fact by itself cannot invalidate the sale as that is not a condition of the sale per-se but is a consequence of the sale in relation to the appropriation of the sale proceeds. Therefore, this contention also stands rejected.

15. The next contention is in relation to the issuance of sale certificate and putting the respondent No.6 in possession on 13.05.2005, which according to the petitioner was bad in law as the same was during pendency of Letters Patent Appeal. This contention also requires to be stated to be rejected. Admittedly, as the record of the Letters Patent Appeal reveals the appeal was filed on 29th April, 2005, but came to be circulated only on 30th May, 2005. Therefore, on 13th May, 2005 when the possession panchnama was drawn and possession was handed over to the successful auction-purchaser, there was no stay in operation in so far as the order dated 1st April, 2005 is concerned made by this Court in the first round of proceedings. By virtue of the said order dated 1st April, 2005, the petition had been rejected and in absence of any stay of operation by any competent superior forum, the petitioner cannot plead that because of pendency of Letters Patent Appeal effect should not be given to the auction sale, which was completed on 23th May, 1988.

16. An incidental submission was to the effect that despite the Division Bench having made an order of status-quo while disposing of the Letters Patent Appeal, the Recovery Officer had issued sale certificate on 3rd December, 2005 and

hence, had violated the order made by Hon'ble Division Bench. This submission also does not deserve acceptance. On going through the order dated 22nd June, 2005 made by the Hon'ble Division Bench of this Court it is apparent that what is stated in the last paragraph of the order is in relation to the claim and counter claim made by the petitioner and respondent No.6 as to possession of the auctioned property. According to the petitioner physical possession was with the petitioner while according to respondent No.6, he had been put in possession in accordance with law as per Rojkam executed on 30th May, 2005. It is in this context that the Hon'ble Division Bench has observed as under:

“Before parting with the case, we deem fit proper to take cognizance of the fact that, while Shri Mehta, learned counsel or respondent No.6 claimed that possession of the disputed land has been taken over by his client, Shri Sanjanwala emphasized that possession is with his client. In this view of the matter, we direct the parties to maintain status-quo as it is obtaining today”.

17. Therefore, the direction is only qua the petitioner and respondent No.6 to maintain status-quo in relation to the

possession of the disputed land as obtained on the date of the order, namely, 22nd June, 2005. There is no direction to any other person, including the Recovery Officer not to take any steps.

18. The contention regarding the proceedings being barred by limitation in fact does not lie in the mouth of the petitioner taking into consideration the conduct of the petitioner and respondent Nos. 2 to 5 who have taken all possible steps to defeat the legal right of the successful bidder by filing successive proceedings before the Civil Court and the Revenue Authorities. Immediately before the auction sale, to stall the said proceedings, Respondent No.2 and others herein preferred Regular Civil Suit No.107 of 1988 which came to be dismissed vide Judgment and decree dated 18.10.1999. Before that the application for interim injunction Exh.5 was rejected on 15th February, 1988 and had been confirmed by the Appellate Court of 2nd Joint District Judge, Surat vide order dated 04.04.1988 in Misc. Civil Appeal No.70 of 1988.

19. Once again respondent No.2 along with respondent Nos. 3 and 4 preferred another suit being Regular Civil Suit No.358 of 2003. During pendency of the said suit, respondent

No.2 and others preferred Special Civil Application No.7040 of 2004 before this Court challenging earlier notice dated 21.05.2004 calling upon the petitioner and others to hand over the possession of the auctioned property. On 30.12.2004, the Civil Court rejected application Exh.5 and the said order came to be confirmed in absence of any further proceedings. It was in this context, that the impugned notice / order dated 17.01.2005 has been issued by respondent No.1 after the decision of the Civil Court on 30.12.2004 in Regular Civil Suit No.358 of 2003.

20. Therefore, the petitioner cannot be permitted to say that the respondent-Bank did not take any steps or that respondent No.6 did not initiate any proceedings to obtain possession pursuant to auction sale dated 23.05.1988.

21. Having failed at all stages in the proceedings before the Civil Court, on 09.05.2005 the petitioner approached the Revisional Authority under Section 211 of the Code challenging the order dated 23.05.1988. It is necessary to also take note of the fact that before approaching the Revisional Authority, on 24.01.2005 the petitioner had approached the Collector, Surat who directed the petitioner to

approach the Revisional Authority vide order dated 21.04.2005. Thus it becomes apparent that the petitioner himself has endeavoured to delay handing over of possession by instituting various suits and other proceedings before Revenue Authorities. Such a person cannot invoke the equity jurisdiction of this Court on the ground of delay in handing over possession when the delay, if any, has occurred only at the instance of the very same person.

22. The order made by Revisional Authority on 12.09.2006 was read extensively to make submission to the effect that though the Revisional Authority was only required to decide whether delay in preferring the revision should be condoned or not the Revisional Authority has decided the revision on merits. This submission is not correct. When one reads the order as a whole it becomes apparent that the Revision Application has been rejected only on the ground of limitation as the same has been preferred after a period of nearly 16 years. The facts preceding the filing of the Revision Application have been narrated by the Revisional Authority in support of the findings as to why the Revision Application does not merit acceptance. The order is categorical in terms when it says that the Revision Application is not admitted and is not

required to be entertained. Therefore, this contention also does not deserve acceptance.

23. In the aforesaid set of facts and circumstances, the reliance on article 134 of the Limitation Act and the aforesaid Apex Court Judgment cannot carry the case of the petitioner any further as this is not a case where either the Authority or the respondent No.6 were found having abandoned the cause.

24. In light of what is stated hereinbefore, the petition does not merit acceptance and is accordingly rejected. Notice discharged.

25. Considering the chequered history and the propensity of the petitioner to indulge in frivolous litigation, this is a fit case wherein the petitioner should be visited with costs which are quantified at a sum of Rs.10,000/-. The costs shall be payable to respondent No.6 who has been kept out of actual possession of the property despite having made payment of the sale price as far back as in 1988 taking into consideration the loss of interest on the said amount.

26. At this stage, the learned advocate for the petitioner makes request to stay the operation of this judgment. In light of the facts which have come on record, the request is rejected.

(D.A.MEHTA, J.)

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